Supreme Court, U.S.
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Nos. 88-1145, 88-1163

In The

Supreme Court Of The United States

October Term, 1988

The Dong-A Ilbo, *et al.*,
and
Central Virginia Educational
Television Corporation,

Petitioners,

v.

Chang-Sin Lee,

Respondent.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONERS' SUPPLEMENTAL BRIEF OF RECENT DEVELOPMENTS AND REPLY TO RESPONDENT'S SUGGESTION OF MOOTNESS

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TABLE OF AUTHORITIES

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Preliminary Statement

The petitioners in this case wish to bring intervening matters to the Court's attention pursuant to Rule 35.5 of the United States Supreme Court. Since the two companion petitions for certiorari were filed on January 11, 1989 (No. 88-1145), and on January 12, 1989 (No. 88-1163), this case has been tried in the United States District Court for the Eastern District of Virginia. The case was tried on January 31, February 1 and 2, 1989. An adverse verdict was rendered against six of the seven petitioners. Such an adverse verdict demonstrates why the petition for certiorari in *The Dong-A Ilbo, et al. v. Chang-Sin Lee*, No. 88-1145, should be granted.

Supplemental Statement Of Facts

In his Suggestion Of Mootness, the respondent Chang-Sin Lee ("Lee") correctly but incompletely recites the recent chronology of the trial of this case (Respondent's Suggestion Of Mootness at p.3). What Lee has failed to inform this Court is that although one of the petitioners, Central Virginia Educational Television Corporation ("CVETC"), had a verdict directed in its favor at the close of Lee's case-in-chief, the remaining six newspaper defendants were subjected to a jury verdict in the aggregate amount of $90,000.

Lee has informed this Court and CVETC, in his Suggestion Of Mootness, that he elects not to appeal the district court's decision to direct a verdict in CVETC's favor and that, therefore, CVETC's petition for certiorari becomes moot. As to the remaining petitioners, however, this Court's action could be dispositive on the issue of ultimate liability.

This Case Is Not Moot

Although there are two petitions for certiorari in this case, both raising the same issue,[1] Lee has suggested that only one of these petitions may be moot. The petitioners concede that the authorities cited by Lee would support his argument, yet they invite the Court's attention to its decision in *Carroll v. President and Commissioners of Princess Anne*, 393 U.S. 175, 179 (1968), where a controversy was found not to have been mooted because "[t]he underlying question persists and is agitated by the continuing activities and program petitioners...." In this case, as the petition for certiorari filed by CVETC, and as the *amicus curiae* brief filed by Univision Holdings, Inc. ("Univision"), convincingly demonstrate, foreign language broadcasting is a firm fixture in the United States, a fixture which performs important heuristic functions for ethnic minorities living in this country, and which is

[1] The petitioners in No. 88-1145 specifically adopt and endorse all arguments made by CVETC in its petition for certiorari in No. 88-1163, as well as the compelling arguments made by the *amicus curiae*, Univision Holdings, Inc., in both No. 88-1145 and No. 88-1163. All parties consented to the filing of Univision Holdings, Inc.'s brief in both cases.

severely jeopardized by the Fourth Circuit's majority opinion. The underlying question, therefore, undoubtedly persists in this case.

Even if CVETC's petition for certiorari should be adjudged to be moot by reason of its success in the trial court and Lee's decision not to appeal, the petition filed by the remaining six newspaper petitioners presents a very real case and controversy. The implications of a libel judgment against media defendants who merely report the news, accurately and impartially, as the court below noted (*see* CVETC App. 16), should send a chilling shudder down the spine of the First Amendment. This is especially the case when the newspapers reported a foreign government's official announcements disinterestedly, fully, and without embellishment or endorsement, as in this case.

For the reasons stated in CVETC's petition for certiorari and Univision's *amicus curiae* brief, the Fourth Circuit's decision cannot withstand constitutional scrutiny. This case presents important, live and novel constitutional questions regarding the "freedom...of the press" guaranteed by the First Amendment, a freedom which is diminished if the Fourth Circuit's decision is permitted to stand unreviewed.

Conclusion

The Suggestion Of Mootness filed by Lee goes only to one of the petitions filed in this case and, even if well taken, cannot affect the vitality of the questions presented in No. 88-1145. The case is not moot and a writ of certiorari should be issued to review the judgment and opinion of the Fourth Circuit.

Respectfully Submitted,

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Certificate of Service

We , Jack G. McKay and Linda Lemmon Najjoum, counsel of record for the Petitioners, and members of the bar of the Supreme Court of the United States, certify that three copies of this Petitioners' Supplemental Brief of Recent Developments and Reply to Respondent's Suggestion of Mootness, were mailed by certified mail, return receipt requested to Don A. Allen, Esq., Patton Boggs & Blow, 2550 M. Street, N.W., Washington, D.C. 20037, and Steven M. Schneebaum, Esq. and Jonathan N. Halpern, Esq., of the same firm and at the same address, counsel for the respondent Chang-Sin Lee; and to M. Therea Hupp, Esq., P.O. Box 419126, 2501 McGee Trafficway, Kansas City, Missouri 64141, counsel of record for the Amicus Curiae Univision Holdings, Inc.

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